

AN ORDINANCE AMENDING CHAPTER 25 OF THE DURHAM CITY CODE
(STREET, PARKS AND RECREATION AND OPEN SPACE IMPACT FEES)
TO ADD NEW CATEGORIES AND TO MAKE
MISCELLANEOUS TECHNICAL CHANGES

WHEREAS the City of Durham has enabling legislation allowing the City to establish impact fees for new development to recoup some or all of the cost of the roads, recreation facilities, and open space needed by such development;

WHEREAS consistent with that legislation, the City has adopted a comprehensive impact fee ordinance that establishes rates in accordance with the traffic generation from various defined categories of land use;

WHEREAS the City staff and the City Council periodically revise this ordinance to take into account new information regarding traffic generation, and to fine tune the operation of the impact fee program;

WHEREAS in light of new studies, investigation, and information the City has received from professionals familiar with traffic impacts, land uses, and the Durham ordinance, it appears that such a revision is now indicated, and will be in the public interest:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM THAT:

SECTION 1:

Section 25 of the Durham City Code, as it is set forth below, is hereby amended by deleting the current section and substituting in its place the following:

“Durham City Code - Chapter 25

STREET, PARKS AND RECREATION AND OPEN SPACE LAND IMPACT FEES*

Sec. 25-1. Findings.

The City Council hereby finds and declares that:

(a) An adequate system of streets, parks and recreation facilities, and open space land is vital and necessary to the health, safety, welfare, and prosperity of the City and its citizens. Substantial growth and new construction has taken place in recent years and is anticipated to continue in the future. This causes and imposes increased, substantial demands upon, and needs for, city facilities and infrastructure, including the system of streets, parks and recreation facilities, and open space land, that would not otherwise exist. Meeting these demands and needs is very costly. However, failure to do so will result in an inadequate system of streets, parks and recreation facilities, and open space land. This would make the City a less desirable community and be detrimental to the

health, safety, welfare, and prosperity of the City and its citizens.

(b) To the extent that future growth and new construction in the City places demand upon, and creates needs for, the City's system of streets, parks and recreation, and open space land, the demands and needs should be met by shifting a portion of the capital costs of providing streets, parks and recreation facilities, and open space land from the public at large to the new construction which creates, in whole or in part, these demands and needs. The impact fees prescribed by this ordinance are equitable, do not impose an unfair or disproportionate burden on developers and new construction, and are in the best interests of the general welfare of the City and its citizens. (Ord. No. 7894, § 1, 9-18-89)

Sec. 25-2. Definitions.

The following definitions apply in this chapter. Where terms are not defined, the definitions in use in the Durham Zoning Code shall apply.

Accessory Dwelling Unit. A dwelling that exists as part of a principal dwelling or on the same lot as the principal dwelling and is subordinate to the principal dwelling.

Amusements and Fairgrounds. Commercial recreational activities, including but not limited to skateboard parks, water slides, roller coasters, ferris wheels, and similar amusements.

Assisted Living. Residential settings that provide either routine or general protective oversight or assistance with activities necessary for independent living to mentally or physically limited persons.

Bowling alleys. A recreational facility that contains bowling lanes.

Business Park. A development containing flex-type or incubator one- or two-story buildings served by a common roadway system. The space may include offices, retail and wholesale stores, restaurants, recreational areas, and warehousing, light industrial, or scientific research functions. The mix of uses must have a maximum of 30 percent office/commercial and a minimum of 70 percent industrial/warehousing.

Capital costs. The phrase "capital costs" has the meaning set forth in G.S. 159-48(h). The term "purpose authorized," as used in G.S. 159-48(h), shall be deemed to refer to the purposes authorized by Section 115.3 of Chapter 802 of the 1987 Session Laws. "Capital costs" includes payment of the principal and interest on any debt or other financial obligation incurred by the City with respect to a purpose authorized by Section 115.3 of Chapter 802 of the 1987 Session Laws.

College and University. Four-year post-secondary institution which grants bachelor's degrees and whose primary function is instruction. May or may not offer post-graduate degrees. Land uses include instructional and research buildings, student dormitories, and other related support facilities. Employee to student ratio is typically less than 0.5 (employee per student). This use category does not include buildings or uses that are separated from the main campus, or uses such as retail, hospital, or hotel/motel which are separately categorized in this ordinance.

Continuing Care Retirement Community (CCRC). A residential setting that provides housing options for multiple stages of senior adult living. A CCRC can contain combinations of Retirement Community (attached and detached), Assisted Living, and skilled nursing care.

Developer. Any person, firm, corporation, or other legal entity, including but not limited to political subdivisions of the state, who or which constructs or creates new construction.

Dwelling unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. For purposes of this section, dwelling unit shall also include bedrooms separately rented in a facility, such as a dormitory or a fraternity house.

Driving range. An outdoor facility containing driving tees for golfers to practice.

Expend. To spend or to encumber as required by Chapter 159 of the General Statutes.

Feepayer. A person who pays any applicable impact fees.

Golf course. Any facility related to the game of golf such as putting greens, 18-hole or 9-hole golf courses.

Group care facilities. An establishment or institution, public or private, where unrelated persons are housed and furnished with meals and supervision. This includes, without limitation, family care homes, group homes, orphanages, rest homes, and nursing homes of all types.

Health Club. Any facility that includes as the major focus of the facility, by way of example and not limitation, swimming pools, whirlpools, saunas, tennis, racquetball and handball courts, exercise classes, weightlifting and gymnastics equipment, locker rooms, and a restaurant/snack bar. A health club is distinguished from a recreational facility primarily by the emphasis on exercise and recreational facilities rather than open meeting spaces.

Hotel/motel. The phrase "hotel/motel" means either:

- (1) Any building containing six (6) or more guests rooms intended to or designed to be used, or which are used, rented, or hired out to be occupied or which are occupied for sleeping purposes by guests; or
- (2) A bed and breakfast establishment.

Impact fees. Facilities fees on new construction as authorized by Chapter 802 of the 1987 Session Laws.

Incidental use. A use which is subordinate to and serves a prevailing use.

Industrial/manufacturing/agricultural processing. Establishments engaged in the processing of materials, fabricating, manufacturing, mixing, printing, assembly, cutting or repairing of articles, and products for handling, distribution of materials, articles or products. These are usually described as factories, mills, and plants. Materials processed by these establishments include agricultural, forestry, fishing, mining and quarrying as well as products of other manufacturing establishments.

Institutional. The use of a building or structure for the gathering of persons for religious or

educational functions, for day care, for the provision of medical treatment and care, or for incarceration. Examples of this category are listed in the Durham Zoning Code.

Junior/Community College: Two-year junior, community or technical colleges which award two-year degrees and whose primary function is instruction. Land uses include instructional buildings and other related support facilities.

Major Research University. University which grants post graduate degrees in multiple disciplines including science and/or engineering, and which provides a significant percentage of campus office and laboratory space to research programs in addition to regular student instruction. Land uses include instructional and research buildings, student dormitories, and related support facilities, including, but not limited to, dining halls and book stores. Employee to student ratio is typically 0.5 (employee per student) or greater. This use category does not include buildings or uses that are separated from the main campus, or uses such as limited retail, hospital, or hotel/motel and clinics (except where the prevailing use is research) which are separately categorized in this ordinance.

Manufactured Home Park. Any portable, manufactured housing unit designed for transportation on its own chassis and for placement on a temporary or semi-permanent foundation where the unit is located adjacent to other manufactured homes in a development of manufactured homes. Manufactured homes that are located outside a development for manufactured homes will be treated as single family homes for calculation of all impact fees.

Medical Office. Establishments where humans receive treatment of illnesses or pregnancy, or examinations by a doctor, dentist, optician, psychologist, or other similar medical professional on an out-patient basis.

Miniature Golf Course. Any free-standing facility consisting of one or more putting courses.

Mini-warehousing. A building in which a storage unit or vault is rented for the storage of goods. Each unit is physically separated from other units and access is provided through an overhead door.

Multifamily. A structure which contains two (2) or more dwelling units. Multifamily structures include, by way of illustration and not limitation:

- (1) Duplexes;
- (2) Condominiums;
- (3) Townhouses;
- (4) Apartments;
- (5) Off-campus sorority or fraternity houses;
- (6) Rooming and boarding houses; and
- (7) Off-campus dormitories

Multiplex Movie Theater. Theater containing a minimum of ten screens.

New construction. Any new development, construction or installation that results in any real property improvement or for which a building permit is required. This term shall include the installation of a manufactured home and factory built and modular housing. This term shall not include fences, poles, pipelines, transmission lines, or similar structures and improvements, or

renovation and repairs, which do not generate the need for additional or expanded streets, parks and recreation facilities, or open space land upon completion of the new construction.

Nonresidential. The use of a building that is not a residential use. This includes the following:

- (1) Office;
- (2) Industrial;
- (3) Retail;
- (4) Institutional; and
- (5) Recreational.

Office. An office building houses one or more occupants and is the location where the affairs of a business, commercial or industrial organization, professional person or firm are conducted.

Office Park. A subdivision or planned unit development containing general office buildings and support services, including but not limited to banks, restaurants, and service stations, arranged in a park- or campus-like configuration, and served by a common roadway system.

Open space. The provision or acquisition of open space land in accordance with Article 19, Part 4, Chapter 160A of the General Statutes of North Carolina.

Parks and recreation facilities. The provision of facilities, including without limitation land, athletic fields, parks, playgrounds, courts, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, lighting, trail construction, and bikepaths.

Place of Worship. A building primarily used by a non-profit organization for organized religious services and supporting uses.

Racquet Club. Facility that offers tennis, racquetball or handball courts as a primary attraction, possibly in conjunction with other minor recreation facilities.

Recreational. The use of a building or structure for the gathering of persons for civic, social, or recreational functions.

Recreational Community Center. A facility in which a substantial portion of the space is used for meeting or gathering areas. The facility may also include incidental offerings, by way of example and not limitation, classes and clubs for adults and children, swimming pools, whirlpools, saunas, tennis, racquetball and handball courts, exercise classes, weightlifting and gymnastics equipment, locker rooms, and a restaurant/snack bar.

Residential. The use of a building as a dwelling unit.

Retail. Establishments engaged in retail trade, or the sale, lease or repair of merchandise, including reproductions, to the general public for use or consumption. Included in this category are all retail uses, whether freestanding or part of a shopping center. Stock areas used to inventory, replenish or prepare merchandise sold to the public are retail.

Retirement community. Any congregate care or life care facility which contains two (2) or more dwelling units and are occupied by persons sixty-two (62) and older. These facilities provide shared food preparation and dining areas, and common recreation, social and service facilities for the use of all residents.

Service Zones. Geographically defined subareas of the City established pursuant to Chapter 802 of the 1987 Session Laws. For parks and recreation and open space land impact fees, these areas are shown on a map labeled “Impact Fee Service Zones,” attached to and made a part of this chapter as Attachment 2. For street impact fees, these areas are shown on a map labeled “Street Impact Fee Service Zone,” attached to and made a part of this chapter as Attachment 3.

Single family. A single residential structure located on its own lot and not physically connected in any way to any other residences or buildings containing a nonresidential use. Single family includes detached dwellings including detached units approved as part of a townhouse, condominium or cluster development.

Skating Rink. Any facility used for ice skating-oriented or roller skating-oriented sports and entertainment activities.

Street. For purposes of this chapter, "street" shall refer to any major or minor thoroughfare as shown in the Durham Urban Area Thoroughfare Plan. The provision of a street includes, by way of illustration and not limitation, bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing and widening of the street; sidewalks, curbs and gutters, culverts and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.

Temporary structures. Those structures or uses in place for three (3) months or less or are those placed on a construction site during construction and which are used exclusively to shelter construction plans, personnel and telephones, but are not used as a temporary sales office or model home.

Theater/Arena/Stadium. Facilities or structures (including indoor or outdoor places) that have fixed seating that are used for cinemas, stage performances, live sporting events, or other entertainment events. Amphitheaters and race tracks are included in the definition.

Trip. A single or one direction vehicle movement with origin or destination at the location of new construction.

Truck Terminal. Facilities where goods are transferred between trucks, or between trucks and railroads.

Warehousing/wholesale-distribution/transfer-storage facilities. An establishment or place of business with storage area of five hundred (500) or more square feet engaged in one or more of the following activities:

- (a) Selling merchandise to retailers;
- (b) Acting as agents or brokers in buying merchandise or retailers;
- (c) Transferring or storing household goods or pets, commercial goods, agricultural products or any other item.

Sec. 25-3. Impact fees imposed on new construction.

(a) In addition to all other charges prescribed by ordinance, resolution, or otherwise, now or hereafter in effect, impact fees shall be charged to new construction located within the corporate limits of the City. No certificate of compliance shall be issued for any activity

requiring the payment of impact fees until the impact fees hereby required have been paid in full. Payment of such fees shall not relieve the developer from the obligations to comply with any other applicable city ordinances, regulations, and requirements, including but not limited to, the land development regulations of Chapters 19 and 24 of the Durham City Code.

(b) The impact fees shall be as follows:

| STREET IMPACT FEE SCHEDULE | | | | |
|--|---------------|----------------|----------------|-------------------|
| Land Use | Fee Basis | South (Zone 1) | North (Zone 2) | Downtown (Zone 3) |
| Residential | | | | |
| Single Family | dwelling unit | \$795 | \$817 | \$157 |
| Accessory Dwelling Unit | dwelling unit | \$795 | \$817 | \$157 |
| Multifamily | dwelling unit | \$488 | \$501 | \$96 |
| Manufactured Home Park | dwelling unit | \$465 | \$477 | \$92 |
| Retirement Community-Det. | dwelling unit | \$205 | \$210 | \$40 |
| Retirement Community-Att. | dwelling unit | \$87 | \$89 | \$17 |
| Assisted Living | beds | \$173 | \$178 | \$34 |
| Continuing Care Retirement Community (5) | unit | \$228 | \$234 | \$45 |
| Hotel/Motel (4) | room | \$559 | \$574 | \$110 |
| Recreational | | | | |
| Amusements/Fairgrounds (3) | acre | \$3,111 | \$3,194 | \$613 |
| Public Park or Playground (3) | acre | \$47 | \$49 | \$9 |
| Racquet Clubs | court | \$2,638 | \$2,709 | \$520 |
| Golf Courses (3) | acre | \$236 | \$243 | \$47 |
| Driving Range | # tees | \$984 | \$1,011 | \$194 |
| Miniature Golf Course | # holes | \$984 | \$1,011 | \$194 |
| Theatre/Arena/Stadium | seats | \$55 | \$57 | \$11 |
| Multiplex Movie Theater | seats | \$63 | \$65 | \$12 |
| Skating Rink (1) | 1,000 sq ft | \$1,858 | \$1,908 | \$366 |
| Health Club (1) | 1,000 sq ft | \$1,599 | \$1,641 | \$315 |
| Bowling Alley (1) | 1,000 sq ft | \$2,788 | \$2,862 | \$550 |
| Rec Community Center (1) | 1,000 sq ft | \$906 | \$930 | \$179 |
| General Recreation (3) | acre | \$4,544 | \$4,665 | \$896 |
| Industrial | | | | |
| Manufacturing (1) | 1,000 sq ft | \$583 | \$598 | \$115 |
| Warehouse/Distribution (1) | 1,000 sq ft | \$370 | \$380 | \$73 |
| Truck Terminal (3) | acre | \$5,733 | \$5,886 | \$1,130 |
| Mini-Warehousing (1) | 1,000 sq ft | \$205 | \$210 | \$40 |
| Institutional | | | | |
| Place of Worship (1) | 1,000 sq ft | \$567 | \$582 | \$112 |
| Hospital (1) | 1,000 sq ft | \$945 | \$970 | \$186 |
| Elementary School (2) | student | \$228 | \$234 | \$45 |
| Middle School (2) | student | \$417 | \$429 | \$82 |
| High School (2) | student | \$323 | \$332 | \$64 |
| Daycare (1) | 1,000 sq ft | \$630 | \$647 | \$124 |
| Jr. College/Tech Institute (1) | 1,000 sq ft | \$874 | \$898 | \$172 |
| College or University (1) | 1,000 sq ft | \$850 | \$873 | \$168 |
| Major Research University (1) | 1,000 sq ft | \$764 | \$784 | \$151 |
| Group Care Facilities | bed | \$173 | \$178 | \$34 |
| Retail | | | | |
| < 50,000 sq ft (1) | 1,000 sq ft | \$2,504 | \$2,571 | \$494 |
| 50,000 - 99,999 sq ft (1) | 1,000 sq ft | \$3,197 | \$3,283 | \$630 |
| 100,000 - 199,999 sq ft (1) | 1,000 sq ft | \$2,835 | \$2,911 | \$559 |
| 200,000 - 500,000 sq ft (1) | 1,000 sq ft | \$2,370 | \$2,434 | \$467 |
| over 500,000 sq ft (1) | 1,000 sq ft | \$2,260 | \$2,321 | \$446 |
| Office | | | | |
| Medical Office (1) | 1,000 sq ft | \$2,882 | \$2,959 | \$568 |
| < 50,000 sq ft (1) | 1,000 sq ft | \$1,764 | \$1,811 | \$348 |
| 50,000 - 99,999 sq ft (1) | 1,000 sq ft | \$1,638 | \$1,682 | \$323 |
| 100,000 - 149,999 sq ft (1) | 1,000 sq ft | \$1,402 | \$1,439 | \$276 |
| 150,000 - 199,999 sq ft (1) | 1,000 sq ft | \$1,252 | \$1,286 | \$247 |
| over 200,000 sq ft (1) | 1,000 sq ft | \$1,118 | \$1,148 | \$220 |
| Office Park | | | | |
| < 50,000 sq ft (1) | 1,000 sq ft | \$1,937 | \$1,989 | \$382 |
| 50,000 - 99,999 sq ft (1) | 1,000 sq ft | \$1,788 | \$1,835 | \$352 |
| 100,000 - 149,999 sq ft (1) | 1,000 sq ft | \$1,669 | \$1,714 | \$329 |
| 150,000 - 199,999 sq ft (1) | 1,000 sq ft | \$1,575 | \$1,617 | \$311 |
| over 200,000 sq ft (1) | 1,000 sq ft | \$1,457 | \$1,496 | \$287 |
| Business Park | | | | |
| < 50,000 sq ft (1) | 1,000 sq ft | \$1,150 | \$1,181 | \$227 |
| 50,000 - 99,999 sq ft (1) | 1,000 sq ft | \$1,142 | \$1,172 | \$225 |
| 100,000 - 149,999 sq ft (1) | 1,000 sq ft | \$1,134 | \$1,164 | \$224 |
| 150,000 - 199,999 sq ft (1) | 1,000 sq ft | \$1,126 | \$1,156 | \$222 |
| over 200,000 sq ft (1) | 1,000 sq ft | \$1,118 | \$1,148 | \$220 |

- (1) Square footage shall be calculated according to gross floor area (the area within the inside perimeter of the exterior walls, with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of court and vent shafts).
- (2) Student-the total student capacity of any school or any addition to an existing school.
- (3) A standard based on acreage refers to the total land and water surface area of any lot or lots on which any primary, accessory, or incidental use or portion thereof is located.
- (4) Hotels or motels that contain any convention or civic center shall, in addition to paying street impact fees based on rooms shall also pay the street impact fee based on general recreation for the civic center or convention center.
- (5) For Continuing Care Retirement Communities the number of units is the sum of dwelling units and beds.

ALTERNATIVE STREET IMPACT FEE CALCULATION

In the event that a feepayor believes that the attributable costs for improving the system of streets to serve the feepayor's new construction is less than the street impact fee schedule, the feepayor may submit an alternative fee calculation to the Department of Public Works based upon the following:

$$\text{Impact fee} = (\text{PHT}) \times (\text{DR}) \times (0.75 \times \text{Cost per trip end}^1)$$

where

- PHT = the number of peak hour trips of the new construction, determined using the peak hour (AM or PM) that generates the highest number of trips
- DR = diversion ratio (1 - the percent of diverted trip).
The diversion ratio is one for all uses except retail uses, and
- COST = the capital costs of providing streets, less: credits for existing street deficiencies, through-trip discount, NCDOT Transportation Improvement Plan contributions, double payment credits, and time differential adjustments.² For purposes of this calculation, it is the policy of the City to only charge 75% of the actual cost per trip end.

The Department of Public Works shall determine whether the above calculations are reasonable, with consideration given to generally accepted professional practices and methodology, appropriateness and applicability of submitted data on peak hour trips, local conditions, and qualifications of professionals submitting the data. Based on these considerations, the Director of the Department of Public Works may determine that the alternative street impact fee is the street impact fee due and owed for the new construction. The cost of performing the alternative fee calculation shall be borne by the feepayor.

¹The cost per trip end for the south zone is \$3,149.92.

The cost per trip end for the north service zone is \$3,234.31.

The cost per trip end for the downtown service zone is \$621.03.

²These offsets to the calculation of costs are further explained in the "Impact Fee Methodology for Streets, Parks and Recreation, and Open Space Land" report.

PARKS AND RECREATION FACILITY IMPACT FEE SCHEDULE

Residential

| | |
|------------------------|---------------|
| Single Family | \$296.99/unit |
| Manufactured Home Park | \$296.99/unit |
| Multifamily | \$183.38/unit |

OPEN SPACE LAND IMPACT FEE SCHEDULE

Residential

| | |
|------------------------|--------------|
| Single Family | \$51.57/unit |
| Manufactured Home Park | \$51.57/unit |
| Multifamily | \$32.92/unit |

(c) *Impact Facility fee exceptions.* Impact fees as provided in subsections 25-3 (a) and (b) shall not be imposed in the following circumstances:

- (1) Governmental authorities which are exempted by law from paying the fees.
- (2) Alterations, repairs, renovations, or expansion of a residential building where no additional residential units are created, and the use, as shown within the fee schedule, is not changed.
- (3) Replacement of a building or structure or manufactured home with a new building or structure or manufactured home of the same dwelling type or nonresidential use. Nonresidential alterations, repairs, renovations, or replacement buildings or structures must be of the same size and use as the original building or structure and must meet the same parking, acreage, or other fee basis requirements.
- (4) The construction of walls, fences, monuments, poles, pipelines, antennas, transmission lines, unmanned utility stations or substations, wells, water towers; off-street parking decks, garages, or lots with vehicular parking as the primary use.
- (5) Accessory land uses listed in Section 24-11: Table of Permitted Uses or in Section 24-12: Supplementary Use Regulations, including accessory buildings, structures and signs.
- (6) Incidental water sports, play courts, or play fields, provided that there is no solicitation of off-site traffic or business and there is no separate charge or membership fee associated with the use of such facilities.
- (7) Temporary structures or uses.
- (8) Croplands, pasturelands, incidental sheds and barns.

Sec. 25-4. Computation of fees.

(a) The Inspections Department shall determine and collect all impact fees. The fees to be collected shall be determined at the time of building permit application. Before a certificate of compliance is issued for any part of a building, the impact fees for the entire structure must be paid in full. The Inspections Department shall have the authority to determine the appropriate use category, using the definitions in this ordinance, the definitions in the Durham Zoning Code, similarities between proposed uses and defined uses, historic patterns of traffic generation in the

Durham community, and reasonable professional discretion.

(b) The Inspections Department shall calculate the amount of the applicable impact fees due for each structure by:

- (1) Determining the applicable impact fee service zone;
- (2) Verifying the type and number of residential dwelling units and the type of nonresidential new construction and square footage or other applicable measuring criteria for which each certificate of compliance is sought;
- (3) Determining the applicable impact fee per unit or other measuring criteria set forth in subsection 25-3(b); and
- (4) Multiplying the applicable impact fee per unit or other measuring criteria set forth in subsection 25-3(b) by:
 - a. The appropriate number of residential dwelling units (or, for hotel/motel, the number of rooms), or
 - b. The appropriate number of the measuring criteria for nonresidential new construction (i.e., parking spaces, square feet/1,000, acres, students).

(c) The Inspections Department shall take the following special cases into account when calculating the applicable impact fees.

(1) *Alterations, expansions, or redevelopments.* In the case of an alteration, expansion, renovation or redevelopment of an existing development, impact fees shall be levied based upon the **net increase**, if any, above that which the existing development would pay.

(2) *Change of use or the addition of other uses.* In the case of a change of use, such as residential to office, or the addition of other uses such as daycare to a church, which increase the fee rate or total fee above that which the existing use would pay, impact fees shall be paid based upon the **net increase** in the fee for the new use as compared to the previous use. There shall be no reimbursement of any impact fees due to a change of use which has a lower fee than the current use, nor shall there be any reimbursement if a use is terminated.

(3) *Mixed use developments and buildings.* In the case of mixed use developments, whether or not denominated "mixed use" in zoning, or a mixture of uses in buildings, or multiple tenants or unit owners, impact fees shall be based on individual uses, or, if the Inspections Director determines that is unfeasible or impractical, on the prevailing use, as determined in the discretion of the Inspections Director in light of traffic generation of the different uses,

(4) *"Shell only" permits.* In the case of a "shell only" permit, the impact fee amounts may be based on the use or uses used to determine the amount of required off-street parking or as shown on the building permit when no off-street parking is required. If it is found during review of the "up-fit" permit that the uses differ from those uses for the shell, a determination shall be made as to whether or not an additional fee or refund is due. Before the first tenant up-fit certificate of compliance is issued, the impact fees for the entire structure must be paid in full.

(5) *Size of retail establishments.* In the case of retail uses which share common drives or parking areas and which are eligible for the off-street parking requirements of the "stores, retail high volume" use classification contained in section 24-13.C of the Durham City Code, all such retail uses, including those located on separate outparcels, shall pay a street impact fee based on the appropriate square footage range of all the retail uses located within the shopping center even if this is a greater fee than for any single retail use or other combinations of retail uses.

(6) *Unscheduled activity.* If the type of new construction activity is not specified on the street impact fee schedule, the Inspections Department shall use the street impact fee applicable to the most nearly comparable type of land use on the street fee schedule. If the fee payor disagrees with the determination of the Inspections Department, then the fee payor shall use the alternate street

impact fee calculation set forth in this chapter, with the cost per trip end as set forth in the alternative street impact fee calculation schedule.

(7) *Incidental use.* In the case where there is a part of a structure used that is accessory or customary to activity within the structure and that is used primarily by those occupying the structure, then the primary use of the structure shall prevail for the impact fee calculation.

(8) *Vacant parcel with proof of former structure.* In the case where a parcel is vacant but has had a structure on the parcel within five (5) years of the effective date of this chapter [effective November 1, 1989], the inspections department shall consider the use of the former structure in calculating the impact fee upon proof of such structure as provided by the feepayor. Impact fees shall be paid upon the **net increase in** the fee for the new use as compared to the previous use. There shall be no reimbursement of any impact fees due to a change of use which has a lower fee than the former use. (Ord. No. 7894, § 1, 9-18-89; Ord. No. 7925, § 1, 10-16-89; Ord. No. 9165, § 2, 2-4-91)

(9) *Change in Impact Fee Schedule.* In the event that the impact fee schedule is changed, if the fee schedule is lower than the original schedule, and the fee has either not been paid, or has been paid under protest, then the City will charge the fee based on the lower schedule. If the fee has been paid under protest, the City will return amounts above the revised impact fee to the feepayor. If the new fee schedule is higher, then the City will assess impact fees based on the fee schedule in effect at the time that the developer submits a completed building permit application in a form approvable by the City without further modification, including:

- i. All necessary site plan submissions;
- ii. Architectural, electrical, mechanical and plumbing drawings; and
- iii. All other submissions to the City necessary to constitute a completed building permit application form.

Sec. 25-5. Funds collected.

(a) *Creation of trust funds.* The impact fees collected by the City pursuant to this chapter shall be kept separate from other revenue of the City in a manner consistent with the Local Government Budget and Fiscal Control Act. There shall be nine (9) trust funds, one established for each impact fee type by service zone. All impact fee funds collected shall be properly identified by the appropriate trust account.

(b) *Limitation on expenditure of funds collected:*

(1) Funds from impact fee trust accounts shall be expended for no other purpose than capital costs for streets, parks and recreation facilities, or open space. No funds shall be used for periodic or routine maintenance nor administration of this impact fee program.

(2) All funds shall be used exclusively within the service zone from which the funds were collected. An annual report shall be made to the City Council showing where the fees have been collected and what projects have been funded with impact fee monies. The council shall consider this report and whether within each service zone the fees are being spent for the benefit of new construction within the service zone. If the council determines that this is not the case, then it shall adjust the City's capital improvements program and other projected capital expenditures to correct this condition.

(3) Funds shall be expended in the order in which they were collected. Funds not obligated for expenditure within ten years after their collection may be returned to the feepayor, subject to subsection (e) below.

(c) *Dispersal of funds.* Funds withdrawn from these trust accounts must be used solely in accordance with the provisions of this section. Prior to withdrawal, the City Council, upon recommendation of the City Manager, shall make a finding as to the connection between new

construction and the proposed use of funds. The motion for each project wholly or partially financed with impact fees shall read:

"To find that (project name) is at least ___% necessitated by new construction and that up to ___% of the capital costs of that project may be paid by impact fees collected within the same service zone and collected for the same purpose."

(d) *Interest on funds.* Any funds on deposit not immediately necessary for expenditure shall be invested as allowed in G.S. 159-30 for other public monies. All income derived shall be deposited in the applicable trust account.

(e) *Return of fees.* If it is determined by the City that fee assessments collected pursuant to the Chapter have not been spent or encumbered for expenditure by the end of the calendar quarter immediately following ten years from the date the fee was received, then said funds shall be eligible for refund to the then present owner in accordance with the following procedures:

(1) The then present owner must petition the City Manager for the refund within one year following the end of the calendar quarter immediately following ten years from the date on which the fee was received by the City.

(2) The petition must be submitted to the City Manager and must contain:

- a. a notarized sworn statement that the petitioner is the current owner of the development site;
- b. a copy of the dated receipt issued for payment of the fee;
- c. a certified copy of the latest recorded deed;
- d. a copy of the most recent ad valorem tax bill; and
- e. such other information which may be reasonably necessary to ascertain current ownership of the development site.

(3) Within sixty days from the date of receipt of petition for refund, the City Manager or his designee shall advise the petitioner of the status of the fee requested for refund. For the purpose of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made.

(4) When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following ten (10) years from the date the fees were paid, the money shall be returned with interest at the rate of four percent (4%) per annum.

Sec. 25-6. Credits.

(a) *Street impact fees.* A fee payor shall be entitled to credits against street impact fees pursuant to this chapter for rights-of-way dedications, and street construction in excess of the direct need of the new development for streets that have been included in Impact Fee calculations. These include major and minor thoroughfares contained in the Thoroughfare Plan but do not include freeways, collectors, and local roads. The credits shall be determined by the Department of Public Works as follows:

(1) Rights-of-way: Credits shall be granted for rights-of-way for eligible streets dedicated by the fee payor and accepted by the City in accordance with the following provisions:

- a. Credits shall be based on a prorata share of the appraised land value of the parent parcel as determined by calculating one hundred twenty (120) percent of the appraised value according to the Durham County Tax Assessor's Office. Adjustments to the appraised value of property between property revaluations by the county will be made annually

based on cumulative changes in the Consumer Price Index since the most recent revaluation.

- b. Credits shall be granted for dedication of right-of-way in excess of the standard sixty-foot right-of-way for any eligible street the new construction accesses; provided, however, that there shall be no credit for right-of-way dedications necessary to install turn lanes that directly serve the new construction.
- c. If a right-of-way is dedicated and accepted for an eligible street to which the new construction has no direct access, then the entire right-of-way will be included in the credit.

(2) Street construction: Credits shall be granted for street construction for portions of eligible streets in excess of the direct need of the new construction as determined by the Department of Public Works in accordance with the following provisions:

- a. Credits shall be based on the feepayor's actual cost of construction, not to exceed the City's cost of construction according to recent bid sheet information.
- b. Credits shall be granted for construction of the portion of the street in excess of the standard thirty-eight (38) feet face to face of curb for streets that are directly accessed by the new construction; provided, however, that there shall be no credit for construction of turn lanes that directly serve the new construction.
- c. All improvements to streets not directly accessed by the new construction are eligible for credits.
- d. Credits may be granted for future street construction when the developer provides security to the City through an instrument such as a letter of credit or performance bond acceptable to the City. Each such security instrument shall be in a form and amount satisfactory to the City. The amount of any such letter or performance bond shall include the estimated cost of improvements and shall allow for administrative costs, inflation, and other contingencies.

-(3) The cost of land or capital improvements for public transportation-related projects or participation in employee ridesharing, bus subsidy, or other traffic demand management programs to the extent that such programs reduce the external vehicular trip generation of the land use as confirmed by studies and methodologies acceptable to the City. In the case of employee ridesharing, bus subsidy, or other traffic demand management programs, the applicant must first describe, to the satisfaction of the City, the extent of the program and expected usage by employees. The City will collect the entire street impact fees due from the feepayor and set aside an amount equal to the street impact fee credit in reserve. If the owner of the property demonstrates to the satisfaction of the City that the traffic demand management program results in the anticipated automobile trip reduction within three years of the issuance of the certificate of occupancy, then the fee payor will receive a rebate equal to the street impact fee credit or a lesser amount based on actual trip reduction. The provisions for awarding credits for land or capital improvements shall follow those provided in this section for right-of-way and street construction where applicable.

(4) Any feepayor seeking a credit against a street impact fee prescribed by this chapter shall submit a petition to the Department of Public Works. To be eligible for consideration, the petition must be submitted not less than sixty (60) days subsequent to the date the impact fee is paid pursuant to subsection 25-4(a) and must contain where appropriate:

- a. A notarized sworn statement that the petitioner is the current owner of the property;
- b. A copy of any documentation on which the feepayor relies for the claim which may pertain to the issuance of such credits;
- c. A copy of the latest recorded deed to the property;
- d. A description of land or improvements for which the credit is requested;
- e. For new construction involving more than one building, a plan for allocating credits among the various buildings proposed; and

- f. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the Department of Public Works to evaluate the feepayor's petition.

(5) Credits shall be applied against the payment of street impact fees for the property being developed and shall not be transferable to other property. Credits may not be used for payment of any other charges or other impact fees due to the City. Credits may be transferred to subsequent owners of the property, and shall be valid for a period of ten (10) years after being granted by the City. A subsequent owner to whom credits have been transferred shall submit the following to the Department of Public Works prior to any use of such credits:

- a. A notarized sworn statement that the feepayor is the current owner of the property;
- b. A copy of any documentation on which the feepayor relies in support of the claim for the transfer of credits;
- c. A copy of the latest recorded deed to the property; and
- d. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the Department of Public Works to evaluate the feepayor's claim pertaining to the transfer and use of credits.

No payments or refunds shall be made by the City for credits granted to the feepayor which are not used within the ten-year period provided for in this subsection.

(7) Extensions to the time period for using credits may be granted by the City Council, in incremental periods totaling not more than five (5) years in exceptional circumstances where the delay of city completion of a major thoroughfare that was shown on the city's capital improvement plan at the time the credits were granted has delayed the credit-holder's ability to utilize its credits during the ten year time period. Any extension must be applied for in writing prior to the expiration of the ten year period.

(b) *Parks and recreation impact fees.* A feepayor shall be entitled to credits against parks and recreation impact fees pursuant to this chapter for the costs of parks and recreation facilities dedicated by the feepayor and accepted by the City. The credits shall be determined by the Parks and Recreation Department in accordance with the following provisions:

(1) *Park land:* Credits shall be granted for park land dedicated by the feepayor and accepted by the City. Credits shall be based on a prorata share of the appraised land value of the parent parcel as determined by calculating one hundred twenty (120) percent of the appraised value according to the Durham County Tax Assessor's Office. Adjustments to the appraised value of property between property revaluations by the county will be made annually based on cumulative changes in the Consumer Price Index since the most recent revaluation.

(2) *Other parks and recreation facilities:* Credits shall be granted for other parks and recreation facilities dedicated by the feepayor and accepted by the City. Credits shall be based on the feepayor's cost of construction based on invoices, bids and other documentation supplied by the feepayor.

(3) Any feepayor seeking a credit against a parks and recreation impact fee assessed shall submit a petition to the Parks and Recreation Department. To be eligible for consideration, the petition must be submitted not less than sixty (60) days subsequent to the date the impact fee is paid pursuant to subsection 25-4(a) and must contain where appropriate:

- a. A notarized sworn statement that the petitioner is the current owner of the property;
- b. A copy of any documentation on which the feepayor relies for the claim which may pertain to the issuance of such credits;
- c. A copy of the latest recorded deed to the property;
- d. A description of land or improvements for which the credit is requested;
- e. For new construction involving more than one building, a plan for allocating credits among the various buildings proposed; and

- f. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the parks and recreation department to evaluate the feepayor's petition.
- (4) Credits shall be applied against the payment of parks and recreation impact fees for the property being developed and shall not be transferable to other property. Credits may not be used for payment of any charges or other impact fees due to the City. Credits may be transferred to subsequent owners of the property, and shall be valid for a period of ten (10) years after being granted by the City. A subsequent owner to whom credits have been transferred shall submit the following to the City Department of Parks and Recreation prior to any use of such credits:
- a. A notarized sworn statement that the feepayor is the current owner of the property;
 - b. A copy of any documentation on which the feepayor relies in support of the claim for the transfer of credits;
 - c. A copy of the latest recorded deed to the property; and
 - d. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the City Department of Parks and Recreation to evaluate the feepayor's claim pertaining to the transfer and use of credits.

No payments or refunds shall be made by the City for credits granted to the feepayor which are not used within the ten-year period provided for in this subsection.

(c) *Open space impact fees.* A feepayor shall be entitled to credits against open space impact fees pursuant to this chapter for the costs of land dedicated by the feepayor and accepted by the City in excess of the five hundred seventy-five (575) square feet per dwelling unit minimum standard contained in subsection 19-2 of the Durham City Code, or in excess of the amounts of open space required for PDR or RA developments in subsections 24-6 and 24-6.1 of the Durham City Code, as applicable. The credits shall be determined by the City Department of Parks and Recreation in accordance with the following provisions:

- (1) Such credits shall be based on a prorata share of the appraised land value of the parcel as determined by calculating one hundred twenty (120) percent of the appraised value according to the Durham County Tax Assessor's Office. Adjustments to the appraised value of property between property revaluations by the county will be made annually based on cumulative changes in the Consumer Price Index since the most recent revaluation.
- (2) Any feepayor seeking a credit against an open space impact fee assessed shall submit a petition to the City/County Department of Planning. To be eligible for consideration, the petition must be submitted not less than sixty (60) days subsequent to the date the impact fee is paid pursuant to subsection 25-4(a) and must contain where appropriate:
 - a. A notarized sworn statement that the feepayor is the current owner of the property;
 - b. A copy of any documentation on which the developer relies for the claim which may pertain to the issuance of such credits;
 - c. A copy of the latest recorded deed;
 - d. A description of land or improvements for which the credit is requested;
 - e. For new construction involving more than one building, a plan for allocating credits among the various buildings proposed; and
 - f. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the County Department of Parks and Recreation to evaluate the feepayor's petition.
- (3) Credits shall be applied against the payment of open space impact fees for the property being developed and shall not be transferable to other property. Credits may not be used for payment of any other charges or other impact fees due to the City. Credits may be transferred to subsequent owners of the property, and shall be valid for a period of ten (10) years after being granted by the

City. A subsequent owner to whom credits have been transferred shall submit the following to the City Department of Parks and Recreation prior to any use of such credits:

- a. A notarized sworn statement that the feepayor is the current owner of the property;
- b. A copy of any documentation on which the feepayor relies in support of the claim for the transfer of credits;
- c. A copy of the latest recorded deed to the property; and
- d. Such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the City Department of Parks and Recreation to evaluate the feepayor's claim pertaining to the transfer and use of credits.

No payments or refunds shall be made by the City for credits granted to the feepayor which are not used within the ten-year period provided for in this subsection.

Sec. 25-7. Appeals.

(a) After the amount of the impact fees or credits, if any, has been paid, a feepayor may, within ten (10) days, file a written appeal contesting the amount of the impact fees or credits by requesting a conference with the City Manager or his/her designee. If the feepayor, during the pendency of the appeal before the City, desires and is otherwise entitled to receive a certificate of compliance with respect to the new construction for which the amount of the impact fees or credits, if any, has been appealed, then the appealing party shall pay the impact fees with such payment clearly marked as paid under protest. The City Manager or designee shall notify the appealing party of the time and place for the conference. Failure of the appealing party, or representative thereof, to appear at the conference shall be considered an abandonment and withdrawal of the appeal.

(b) At the conference, the City Manager or designee shall consider any statements and evidence presented by the appealing party, and any information provided by the applicable city departments. The City Manager or designee shall then render a decision amending or confirming the amount of impact fees and credits, if any. The City Manager or designee shall make a record of the conference and of the decision rendered.

(c) Where the appealing party believes that the decision of the City Manager or designee is not in accord with the provisions of this chapter, the appealing party may appeal such decision to the City Council by notifying the City Manager or designee in writing within ten (10) days of the date of the decision.

(d) The City Manager or designee shall notify the appealing party by registered or certified mail, return receipt requested, at least ten (10) days in advance of the date and time of the council meeting at which the appeal will be heard. Failure of the appealing party, or representative thereof, to appear at the council meeting shall be considered an abandonment and withdrawal of the appeal.

(e) At the hearing before the City Council, the Council shall hear from the appealing party and other interested persons, the City Manager or designee, and applicable city departments. The council shall review the evidence presented, and enter a final decision amending or confirming the amount of impact fees and credits, if any. The decision shall include findings of fact and conclusions explaining the basis for the decision. The decision shall be delivered to the appealing party by personal service, or by registered or certified mail, return receipt requested.

(f) Every such decision of the City Council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review shall be filed with the clerk of

superior court within thirty (30) days after the decision of the City Council is delivered to the appealing party.

Sec. 25-8. Review.

The City shall conduct a periodic review of the impact fee system in addition to the report prescribed by subsection 255(b)(2). This review may include, by way of illustration and not limitation:

- (a) New construction occurring during the previous year;
- (b) City street, parks and recreation facilities and open space provided or underway during the prior year to serve new construction;
- (c) Changing needs for such city systems;
- (d) Revised cost estimates for such city systems;
- (e) Administration of the impact fee ordinance; and
- (f) Other such factors as may be relevant. (Ord. No. 7894, § 1, 9-18-89)”

SECTION 2. This ordinance shall become effective on July 1, 2004.

SECTION 3. All ordinances in conflict are hereby repealed to the extent of the inconsistency.